LAW OFFICES

TRISTER, ROSS, SCHADLER & GOLD, PLLC

1666 CONNECTICUT AVENUE, N.W., FIFTH FLOOR

WASHINGTON, D.C. 20009 PHONE: (202) 328-1666 FAX: (202) 328-9162

www.tristerross.com

KAREN A. POST Senior Counsel

ALLEN H. MATTISON*
REA L. HOLMES*
†ALSO ADMITTED IN MARYLAND
\$ALSO ADMITTED IN WISCONSIN

ALEXANDER W. DEMOTS
Of Counsel

June 15, 2012

Jeff S. Jordan
Supervisory Attorney
Federal Election Commission
999 E Street, NW
Washington, DC 20463

RE: MUR 6573

Communications Workers of America

Dear Mr. Jordan:

MICHAEL B. TRISTER

B. HOLLY SCHADLER

LAURENCE E. GOLD

GAIL E. ROSS

I write on behalf of respondent Communications Workers of America ("CWA") to respond to the complaint in this matter. For the reasons explained here, the Federal Election Commission ("Commission" or "FEC") should find no reason to believe that CWA violated the Federal Election Compaign Act ("the Aat"), as alleged by complainant New Mexico Republican Party ("NMRP"),

At the outset, we reject as plainly preposterous the NMRP's allegations of criminal behavior with respect to FECA (as well as other federal statutes as to which the Commission has no jurisdiction). At most, the facts alleged, and fellow respondent Independent Source PAC's ("IS PAC") Form 3X; Schedule E and Form 5 filings to date with the Commission, demonstrate that IS PAC has misunderstood in some respects the applicable reporting requirements under the Act, and, since IS PAC's assigned FEC Campaign Finance Analyst inquired about its reports, IS PAC has endeavored to be compliant. And, as the attracted Declaration of Jann Smith-Carr attests, CWA has not participated in IS PAC's decisions concerning its activities, including the content of its public communications, and CWA had no contact with IS PAC about IS PAC's reporting to the Commission or to other governmental authorities until after (and because of) CWA's receipt of the complaint in this matter.¹

These facts alone warrant a Commission finding of no reason-to-believe with respect to CWA, whatever the Commission determines as to IS PAC: of course, merely contributing to a political committee, without more, does not render the contributor liable for how that committee spends those contributions or reports that spending, even assuming that one could determine,

¹ There is a typographical error in the declaration: the amount contributed by CWA to F3 PAC is \$220,060, not \$230,000.

given the fungibility of money, that particular spending utilized particular incoming contributions.

The foregoing aside, the legal flaws in NMRP's substantive allegations are apparent, so even if CWA were limble for some or all of IS PAC's conduct at issue, there is no reason to believe that CWA violated the Act.

Regarding the allegations concerning IS PAC's Schedule E submissions, while it appears that IS PAC was not required to make them, they appear to have been prompted by a subjective determination that the reported public communications would benefit President Obama's reelection even though they mention no federal candidate. An exchange of correspondence between IS PAC and IS PAC's FEC Campaign Finance Analyst that is available on the Commission's website indicates that IS PAC mistakenly understood the legal criteria for an independent expenditure under the Act. We finable that such good-firith over-reporting merits any Commission action other than the technical assistance that the Analyst is appurently providing. As fur NMRP's self-contradictory allegations that some of IS PAC's Schedule E reports were filed late or contained inadequate information, if no report was due at all then a report that was gratuitously filed cannot be either untimely or deficient in content.

The complaint also alleges that "CWA and [IS PAC] have conspired to evade New Mexico [contribution] limits through the creation of a sham federal PAC and defrauding the Commission," and that this is a "crime" (the statutory basis of which NMRP does not identify). Of course, the Commission has no finishiction to enforce New Mexico inw. Regardless, the NMRP is simply wrong: as a centritutional matter, there could be no enformable amount limitation (or source restriction relevant to CWA) on a contribution to a New Mexico-registered political committee that, like IS PAC, does not itself contribute to New Mexico candidates, party committees or other New Mexico-registered contributing state political committees. We know this not only because of Speechnow.org v. Federal Election Commission, 599 F. 3d 686 (D.C. Cir.) (en banc), cert. denied, 131 S. Ct. 553 (2010), and its progeny generally, but most directly because NMRP itself has succeeded as a plaintiff in federal-court litigation in securing an injunction against the very "New Mexico [contribution] limits" it has raised here, namely, those that would otherwise apply to contributions in New Mexico political committees that engage only in independent expenditures. See Republican Party of New Mexico v. King, 2012 U.S. Dist. LEXIS 7225, ** 20-22 (Jan. 5, 2012). For NMRP to file a ucumplaint with the Commission that alleges "fraud" and "circumvent[ing a] New Maxico lnw" that the complainant itself hat effectively everturned in another proceeding, and to do so without disclosing that fact to the Commission, constitutes, let us say, something of a "fraud" on the Commission itself, albeit one whose sole remedy may lie in the Commission's dismissal of its complaint.

Finally, insofar as the complaint may be read to suggest that IS PAC is not really a federal political committee, the NMRP does not purport to provide information about all of IS PAC's activities since its inception in June 2011, and it may be premature to make a political committee determination, which requires a "case-by-case" review of myriad factors to ascertain a group's "major purpose" (assuming, as is not clear here, that IS PAC has reached the statutory

² We also note that IS PAC may not qualify as a New Mexico political committee in the first plane. See generally New Mexico Youth Organization v. Herrora, 611 F. 3d 649 (10th Cir. 2010).

\$1,000 "expenditure" (or "contribution") threshold). See generally The Real Truth About Abortion, Inc. v. Federal Election Commission, INo. 11-1760, slip op. at 20-26 (4th Cir. June 12, 2012); FEC, "Political Committee Status," 72 Fed. Reg. 5595 (Feb. 7, 2007): And, even if IS PAC does not (or down not yet) qualify as a federal political committee, its registration with the Commission and its reporting as such would be another instance of over-reporting as to which technical assistance appears to be the appropriate Commission response.

In short, then, even if CWA were liable for some or all of IS PAC's conduct at issue, there is no reason to believe that CWA violated the Act.

Accordingly, for the reasons set forth above, respondent CWA respectfully requests that the Commission find that there is no reason to believe that CWA violated the Act, and that the Commission dismiss the complaint against CWA.

Yours truly,

Laurence E. Gold

Counsel for Communications Workers of America

Jamem E. Cold

cc: Annie Hill, CWA Secretary-Treasurer
Jana Smith-Carr, CWA Staff Representative